IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 18266 of 2003

Between:

A. Gangadhar Goud S/o Dharma Goud
R/o Sastry Nagar, Nirmal, Adilabad District

..... PETITIONER

AND

1 A.P. State Civil Supplies Corp., Ltd., rep, by its District Manager, Adilabad District
2 The District Collector (C S), Adilabad District
3 The A.P. State Civil Supplies Corp., Ltd., rep. by its General Manager (PDS), Adilabad District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue an appropriate writ, more in the nature of mandamus, declaring the Memo No. Movt/FG-5(2)/2003, dated -8-2003 of the first respondent herein, as being arbitrary, illegal and unconstitutional and consequently set-aside the same.

Counsel for the Petitioner: MR.T.S.ANAND

Counsel for the Respondents: G.P. for Civil Supplies

The Court made the following :

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ORDER:

Heard both sides and at their request the main writ petition itself is taken up for disposal.

The petitioner herein, who is a District Transport Contractor with the A.P. State Civil Supplies Corporation Limited, Adilabad, filed this Writ Petition, inter alia, seeking to assail the Memo No.Movt./FG-5(2)/2003 of August 2003, whereunder the respondent No.1 herein directed for recovery of the value of 122-14 quintals of rice at double the cost of SGRY Ex.North rice in terms of the clause 10 of the agreement from the petitioner and accordingly an amount of Rs.3,23,305.55 was withheld from the stage-I transport bills of June, 2003 towards the said costs which was alleged to have been diverted through lorry No.ATS 2390.

The case of the petitioner is that he being a stage one contractor and having regard to the terms and conditions contained, he is prepared to reimburse any loss or damage suffered by the Corporation and therefore the question of withholding any such amount by the respondent No.1 is totally illegal. Further, it is also pointed out that his representation filed earlier is still remained unconsidered and no valid reasons have been given to fix the liability as such on him. It is also his case that no notice or any prior opportunity was given before passing the impugned order.

In the counter-affidavit filed by the respondent No.1 it is submitted that since there is diversion of stocks, the case has been registered under Section 6-A of Essential Commodities Act. Since Corporation is sustained a loss to a tune of 122.140 quintals, which needs to be recovered from the petitioner and therefore the petitioner is not entitled to any indulgence from this Court.

Considering the submissions made and also on perusal of the material it is seen that even though there is a reference to a letter submitted by the petitioner on the even date, apparently and admittedly no notice or any opportunity was given to

the petitioner before passing the impugned order, fixing the liability. Even otherwise, no valid reasons are given in support of the ultimate conclusion, to which the respondent No.1 has come to. The petitioner's representation has not been answered nor considered in the said proceedings. In view of the same, it is not necessary to go into the merits of the case at this stage, it would suffice in the interest of justice, if an opportunity is given and appropriate orders are passed with reasons.

The Writ Petition is accordingly, allowed and the impugned order is set aside. The respondent No.1 herein shall pass the orders with reasons only after giving opportunity to the petitioner. No costs.

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B.PRAKASH RAO, J.

Dated 30-08-2004.

Skmr

To

1. The District Manager, A.P.State Civil Supplies Corp., Ltd.,

Adilabad District.

2. The District Collector (CS), Adilabad District.

3. The General Manager (PDS), A.P. State Civil Supplies Corp.

Ltd., Adilabad District.

4. 2 CCs to G.P. for Civil Supplies, High Court of A.P., Hyderabad

(OUT).

5. 2 CD copies.